Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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(3)

No. 86-997

In The
Supreme Court of the United States
October Term, 1986

COMMONWEALTH OF PENNSYLVANIA,
Petitioner,

vs.

CHARLES E. LUTZ,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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QUESTIONS PRESENTED

1. Whether outdoor business areas are "open fields" within the meaning of the Fourth Amendment?

2. Whether the warrantless search of Respondent's pasture violated the Fourth Amendment because governmental agents made physical entry into it?

3. Whether the issue of the good faith of the state agents is waived due to the failure of Petitioner to raise the same below?

PARTIES TO THE PROCEEDING

Petitioner is the Commonwealth of Pennsylvania.

Respondent is Charles E. Lutz.

TABLE OF AUTHORITIES

Page

CASES

Commonwealth of Pennsylvania v. Lutz, — Pa. —, 516 A.2d 339 (1986) 1, 2

U.S. v. New York Tel Co., 326 U.S. 638, 66 S. Ct. 393 (1946) 3

Walters v. City of St. Louis, Mo., 347 U.S. 231, 74 S. Ct. 505 (1954) 3

OTHER AUTHORITIES

28 U.S.C. 1257(3) 1

Fourth Amendment, U.S. Constitution 1

Supreme Court Rule No. 17(1) 2

OPINIONS BELOW

The Opinion of the Supreme Court of Pennsylvania dated October 17, 1986, whose judgment herein is sought to be reviewed, is reported at *Commonwealth of Pennsylvania v. Lutz,* — Pa. —, 516 A.2d 339 (1986) and reproduced at Appendix A of Petition For Writ of *Certiorari.* The prior decision of the Court of Common Pleas of Westmoreland County, Pennsylvania is unreported but may be found at Appendix B of Petition For Writ of *Certiorari.*

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JURISDICTION

The Judgment of the Supreme Court of the Commonwealth of Pennsylvania was entered on October 17, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257(3).

—o—

CONSTITUTIONAL PROVISION INVOLVED

This case involves the Fourth Amendment of the United States Constitution, which provides as follows:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, will not be violated, and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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STATEMENT OF THE CASE

A. Procedural History

Respondent accepts (for its present purposes) the Procedural History recited in the Petition For Writ of *Certiorari* of Petitioner.

B. The Evidence

Respondent accepts for its present purposes the Evidence recited in the Petition For Writ of *Certiorari*.

C. Rulings Below

Respondent accepts for its present purposes the Rulings Below recited in the Petition For Writ of *Certiorari*.

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REASONS FOR NOT GRANTING THE REVIEW

Respondent hereby relies upon the able Opinion of the Supreme Court of Pennsylvania in opposing this review. See *Commonwealth of Pennsylvania v. Lutz*, — Pa. —, 516 A.2d 339 (1986), and reproduced at Appendix A of the Petition For Writ of *Certiorari* of Petitioner. Respondent further argues that Petitioner seeks to have this Honorable Court review a decision from the Pennsylvania Supreme Court, a state court of last resort, which: (1) is not in conflict with a decision of any federal court of appeals, or any other state court of last resort; (2) is not in conflict with applicable decisions of this Honorable Court; and (3) does not present a question of federal law which must be settled by this Honorable Court. See Rules of the Supreme Court No. 17(1).

Finally, Petitioner now raises for the first time the good faith of state agents in relying upon the warrantless search provisions of a statute which heretofore had never been declared unconstitutional. This issue, not having been raised at the level of the state court, is now forever waived. *U.S. v. New York Tel Co.*, 326 U.S. 638, 66 S. Ct. 393 (1946); *Walters v. City of St. Louis, Mo.*, 347 U.S. 231, 74 S. Ct. 505 (1954).

CONCLUSION

WHEREFORE, Respondent respectfully prays that a Writ of Certiorari be denied.

Respectfully submitted,

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